

Tom Kirk

CALL: 2007

Email Clerk: jennings@oldsquare.co.uk

Telephone Clerk: 020 7269 0300

LinkedIn: <https://www.linkedin.com/in/tom-kirk-7b07a584/>



Overview

Tom's practice is divided between chambers' Employment & Discrimination, HR Professional Support, Investigations and Commercial teams. He is predominantly an employment law specialist with particular expertise in disability discrimination, frequently instructed by both Claimants and Respondents in difficult long-term sickness absence and reasonable adjustments claims, and disputes over worker status. He is ranked as a leading individual for employment law in both the Legal 500 and Chambers & Partners. These directories have described him as "a gifted and rounded, intelligent advocate" (Legal 500, 2021), "a methodical and skilled cross-examiner" (Legal 500, 2023), "very experienced, knowing when to concede and when to push" (C&P, 2024) and "always meticulously prepared" (Legal 500, 2025).

Tom has extensive experience in dealing with politically sensitive employment disputes for his clients in the public, healthcare, educational and charitable sectors. Through his appointment to the Attorney General's A Panel, he is regularly instructed by government departments in high profile cases. Tom is frequently involved in NHS litigation across a wide range of claims, acting for and advising both British Medical Association (BMA) members and various NHS Trusts. He also regularly advises a range of large trade unions and union members on matters such as worker status, contractual disputes, discrimination and equal pay.

Tom has an accomplished appellate court employment practice, having appeared in several leading and reported cases in recent years, both in the EAT and Court of Appeal. He mainly acts as an un-led junior, often appearing against experienced silks. He therefore has extensive appellate advocacy experience but has also acted as a led junior.

Memberships

2025: Attorney General's Junior Counsel to the Crown, A Panel

2020: Attorney General's Junior Counsel to the Crown, A Panel

2016: Attorney General's Junior Counsel to the Crown, B Panel

2012: Attorney General's Junior Counsel to the Crown, Regional Panel
Volunteer advisor, Employment Law Appeal Advice Scheme ("ELAAS")

Employment Law Bar Association

Employment Lawyer's Association

Discrimination Law Association

Regulatory information

Vat number: 939863953 [Bar Standards Board](#)

Employment & Discrimination

Tom is frequently instructed to appear in lengthy trials and preliminary hearings. He has an extensive paperwork practice and has been acknowledged by clients for providing thorough yet concise advice and robust pleadings. He also advises employer clients on various non-contentious matters, including TUPE transfers and the review of disciplinary / grievance policies and contractual terms. Tom also appears in appeals before the Employment Appeals Tribunal and Court of Appeal and acts in restraint of trade cases in the High Court and in applications for interim relief before the Tribunal.

Expertise

- Commercial Law
- Employment & Discrimination
- HR Professional Support
- Investigations

Recommendations

"He has consistently delivered an excellent service. He has a considered approach to both his written work and advocacy, and feedback from the client has been excellent." Chambers & Partners 2026

"Tom is very calm and considered and able to cut through a complex web of issues to draw out the key issues." Legal 500 2026

"Tom knows the case backwards and is well-prepared. He is good at putting witnesses at ease." Chambers & Partners 2025

"Tom is always meticulously prepared. He also has a good perception of the mood of the tribunal so able to judge effective strategy on cross-examination." The Legal 500 2025

Key contacts

Lee Jennings

Team Leader

Phone: 0207 269 0303

Email: jennings@oldsquare.co.uk

Twinkle Plowman

Junior Team Leader Assistant

Phone: 020 7269 0305

Email: plowman@oldsquare.co.uk

Samantha Jones

Deputy Senior Clerk

Phone: 020 7269 0307

Email: sjones@oldsquare.co.uk

In addition to his work in the public-sector, Tom is equally at home representing commercial clients and has been praised for his ability to quickly find a solution to a dispute that embraces an employer's specific practical and business needs. His Respondent/Defendant clients have included major corporations such as GlaxoSmithKline, Sainsbury's, Homebase, Serco, Royal Mail, LHR Airports, DHL, Barclays, New Look & Selfridges.

Tom has an unstuffy and approachable manner with clients. Solicitors often mention how his conferencing skills make both Claimant and Respondent clients feel quickly at ease when faced with the potentially daunting prospect of litigation.

He has achieved several high value awards and settlements but is also quick to grasp the non-monetary aims pursued by Claimants such as negotiating re-engagement packages, agreeing reasonable adjustments for disabled employees that enable them to return to the workplace, releasing employees from restrictive covenants and agreeing full and fair references. Tom acts for a wide variety of Claimants, including Senior Executives, professionals, and low-paid workers. He regularly acts for trade union members and has represented Unite, Unison, Equity and BMA members in Tribunal claims including those involving failures to make reasonable adjustments, trade union related dismissals, non-payment of the National Minimum Wage, holiday pay, discrimination, whistleblowing, equal pay, and in disputes around worker status and contractual interpretation. He has a firm grounding in litigation involving NHS employment and regularly represents both NHS Trusts and members of the BMA.

Tom also has experience of advising and acting for clients in non-employment discrimination litigation in the civil courts, mainly in the provision of services. He is also Direct Access qualified and has a firm commitment to undertaking Pro-Bono Work, including by assisting in appeals before the EAT under the Employment Law Appeal Advice Scheme (ELAAS).

Reported / Noteworthy Cases

Court of Appeal:

- *Ofsted v Hewston [2025] ICR 1270* (Underhill LJ), a leading case on the importance of disciplinary rules and demonstrating the limits of an employer's ability to rely on an employee's response to charges where the underlying misconduct itself would not be sufficiently serious to justify dismissal. Led by Oliver Segal KC. Reported on by the Independent, BBC and other major news outlets.
- *Robinson v Department for Work and Pensions [2020] IRLR 884* (Bean LJ): on the test for causation in claims for discrimination arising from disability);
- *Dunn v Secretary of State for Justice [2019] IRLR 298* (Underhill LJ): one of the leading cases on s.15 discrimination, confirming the test for causation is the same as under s.13.

Employment Appeal Tribunal:

- *Jones v Ministry of Justice and others [2025]* on the EAT's power to strike out appeals where appellants have breached orders.
- *Pasha v Home Office [2025]* on unfair dismissal, procedural fairness and consistency of treatment
- *Khan v Cabinet Office [2025] EAT 163*: on whether an ET was correct to strike out on res judicata and Henderson v Henderson grounds.
- *Djalo v Secretary of State for Justice [2025] EAT 67* (Heather Williams J) a leading case on the inability of contract workers to claim pay discrimination comparing themselves with direct employees of a principal. Also concerned Article 14 of the European Convention on Human Rights.
- *Home Office v Shah (HHJ Auerbach) [2025] IRLR 649*: guidance for ETs to apply when considering applications for gists of information in national security cases. Led by Adam Tolley KC.
- *Alfred v Commissioners for HMRC [2024]*: responding to appeal against a decision of a Registrar to refuse an appeal based on time grounds.
- *Leslie v Driver & Vehicle Standards Agency [2024] EAT 111*: appeal on the adequacy of an ET's reasons on questions of causation and remoteness and whether injury to mental health attributable to the stress of litigation can be deemed an injury flowing from a discriminatory dismissal.
- *Hewston v Ofsted [2023] IRLR 878* (HHJ Auerbach): on the importance of setting out disciplinary guidance on what touch may be deemed gross misconduct in workplace (reported in the Telegraph, Times and other newspapers).
- *Seccombe v Reed in Partnership [2021] UKEAT/0217/20*: on the interrelationship between the tests for disability and knowledge under the Equality Act 2010.
- *Department for Work and Pensions v Robinson [2019] UKEAT/0021/19* (EAT - Kerr J): on the application of the test for causation under section 15 of the Equality Act 2010 being more than simply but for and the

burden of proof.

- *Aston v Martlet Group Ltd* [2019] ICR 1417 (HHJ Auerbach): on disability discrimination, victimisation and whether doctrine of judicial proceedings immunity compatible with EU law.
- *Davis-Bol v Brook Street and the Secretary of State for Justice* UKEAT/0681/18 (HHJ Auerbach): time limits for appeals and extensions of time (racial harassment claim).
- *Akhigbe v Berkeley Homes (Urban Renaissance) Limited* [2019] UKEAT/0005/18 (Kerr J): on whistleblowing, striking out and the meaning of detriment.
- *Blakely v Onsite Recruitment* [2018] UKEAT/0134/17/DA (Choudhury J): test case on worker status in the construction sector and intention to create legal relations.
- *Farrer v SOSJ* [2018] UKEAT/0286/17 (HHJ Richardson): test case on contractual status of civil service medical inefficiency payments and contractual interpretation.
- *Pugh v RT Electrics Ltd* [2017] ICR D3 (Lady Wise): the application of res judicata / issue estoppel to determinations on time limits (disability discrimination claim).
- *Secretary of State for Justice v Dunn* [2017] UKEAT/0234 (Simler J): discrimination arising from disability, causation and the application of the burden of proof.
- *Taylor v Governing Body of Potters Gate CE Primary School* [2015] UKEAT/0227/14 (HHJ Eady QC): on apparent bias and school governors (disability discrimination).
- *Bleasdale v Healthcare Locums Plc* [2014] UKEAT/0324/13 (HHJ Peter Clark): on whistleblowing, misconduct and the reason for dismissal (causation).

Employment Tribunal:

- *Baker v House of Commons Commission*: multi-day remedy hearing involving alleged substantial career loss and expert witness evidence on both physical and psychiatry injury following discrimination.
- *Pimm v Sodexo*: acting for intervener in case concerning whether a prisoner providing work whilst incarcerated in a private prison could be deemed "a worker".
- *Bettles and Rutter v SOSJ*: test claims brought by POA members on whether a new shift system indirectly discriminated against women.
- *Howarth v Ministry of Defence*: a novel test case determining whether the defence of illegality available where employee appointed in breach of the civil service nationality rules.
- *Djalo v Secretary of State for Justice*: acting for Respondent in this test case concerning allegedly indirectly discriminatory pay practices in the way government cleaning services are contracted out.
- *X v SOSJ*: acted for Respondent in whistleblowing claim involving a high-profile interview given to BBC by TU official about prison officer assaults and understaffing.
- *Kumrai v SOSJ and ors*: acted for Respondent in claims of race discrimination brought by serving Tribunal Judge involving senior members of judiciary (reported in the Times).
- *Slater and ors v Matthew Clark Bibendum*: acted for the Respondent in these claims brought by multiple senior directors for breach of contract, unfair dismissal & under TUPE, following the break-up of Conviviality plc, the UK's largest drinks distribution business.
- *Gregory v DFT*: acted for Respondent in claims involving whether the new Sat Nav driving test, rolled out nationwide, is indirectly discriminatory on grounds of disability.
- *Dhami v Tesco Stores Ltd*: acted for Claimant in one of first cases since the landmark Unison Supreme Court judgment to consider unlawful tribunal fees as a reason for extending time in a disability discrimination case.

HR Professional Support

Tom frequently advises both public and private sector Human Resources clients on non-contentious employment issues, e.g. the reviewing and drafting of disciplinary, grievance and pay policies, advising on whether policies are indirectly discriminatory and TUPE.

He also has experience of acting as the independent legal adviser in internal disciplinary and appeal hearings and advising clients on how to conduct disciplinary and grievance investigations. Tom writes and delivers in-house training for HR clients, providing an updating service on a whole host of employment law topics and putting on mock tribunals.

Investigations

Tom has a firm understanding of what constitutes a full and fair investigation through his experience of dealing with employment cases which have examined investigatory processes. Tom has experience of conducting cases in the Employment Tribunal which have examined the sufficiency and scope of investigations into whistleblowing allegations and concerned grievances and disciplinary matters. He has acted as a legal adviser to county councillors sitting as personnel appeals committees and has provided advice to clients on how to improve the way in which their investigations are completed, on the interplay between disciplinary and grievance investigations and on the re-opening of investigations at an appeal stage. Tom has provided numerous seminars and in-house training sessions to solicitors and HR professionals, which have explained how to carry out disciplinary and grievance investigations properly and how to minimise litigation risk in doing so.

Commercial

Tom's commercial practice intersects with his employment work and he often advises companies on their obligations under TUPE, how to draft employment contracts and on restraint of trade issues. He has acted for companies in a number of commercial disputes involving contracts for the sale of goods and has advised on the incorporation and construction of indemnity and warranty clauses within commercial contracts.

Recent cases include:

- *Loopdynamic Ltd v Louis Young and Open Select Recruitment Ltd* (QBD) (Picken J): application for interim injunction by recruitment company to enforce restrictive covenants in recruitment consultant's contract, involving ambit and reasonableness of non-solicitation clauses;
- *Z v G*: advising and drafting pleadings in commercial contract dispute over the supply of digital marketing services;
- *X v Y*: advising over the enforceability of various restrictive covenants for consultants working as international foreign exchange brokers.

Professional Recommendations



"Tom is always meticulously prepared. He also has a good perception of the mood of the tribunal so able to judge effective strategy on cross-examination."

The Legal 500 2025

"His advice is clear throughout and his preparation for and advocacy at the hearing was excellent."

Chambers & Partners 2025

"Tom knows the case backwards and is well-prepared. He is good at putting witnesses at ease."

Chambers & Partners 2025

"I know that I am in safe hands when Tom is instructed on a matter."

Chambers & Partners 2024

"Great counsel. He's very detailed in his advice and cares about his clients."

Chambers & Partners 2024

"He is very experienced, knowing when to concede and when to push. He knows how to handle his opponent appropriately, which helps get the best for the client."

Chambers & Partners 2024

“Tom is detailed and forensic. He has an excellent eye for detail and will fight to the last moment for his client.”

The Legal 500 2024